

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID LOWELL WRIGHT,

Defendant-Appellant.

UNPUBLISHED

October 1, 2002

No. 232184

Isabella County Circuit Court

LC No. 00-009536-FH

Before: Holbrook, Jr., P.J., and Zahra and Owens, JJ.

PER CURIAM.

Defendant was charged with one count each of felonious assault, MCL 750.82, and domestic-violence assault, MCL 750.81(2). After a jury trial, defendant was convicted of both counts and sentenced as a fourth habitual offender, MCL 769.12, to four to fifteen years' imprisonment for the felonious assault conviction and 93 days' imprisonment for the domestic-violence assault conviction. Defendant appeals as of right. We affirm.

I

On appeal, defendant first argues that there was insufficient evidence to convict him of felonious assault. When reviewing a sufficiency of evidence challenge, this Court reviews the evidence in the light most favorable to the prosecution to determine whether a rational juror could have found that the prosecution proved the elements beyond a reasonable doubt. *People v Nowak*, 462 Mich 392, 399; 614 NW2d 78 (2000). "The elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

Here, the victim, defendant's then girlfriend, testified that defendant had threatened to stab her with a screwdriver after the victim locked her keys in the car. Defendant used the screwdriver to break the car's lock and left the screwdriver in the backseat of the car. Later in the evening, the couple checked into a motel. The victim testified that while they were getting clothes out of the backseat of the car, defendant punched her in the mouth. Then, according to the victim, defendant handled the screwdriver as if to say "I got the screwdriver ... what are you going to do[?]" The victim testified that she feared defendant might follow through with the earlier threat to stab her.

Defendant contends that the screwdriver was a harmless tool, not a dangerous weapon, and that evidence he handled the screwdriver was insufficient to prove that he intended to injure the victim or place her in fear of an immediate battery. This Court, however, concludes that in light of defendant's ongoing violent conduct and previous threats with the screwdriver, the jury could reasonably find that the screwdriver was a dangerous weapon in this context of an enraged and violent defendant. Moreover, the victim's testimony stated that she feared defendant might follow through with his earlier threat to stab her. Under these circumstances, the jury could reasonably find that the victim had a reasonable fear of an immediate battery. When viewed in the light most favorable to the prosecution, *Nowak, supra*, the evidence was sufficient to prove the elements of the felonious assault, *Avant, supra*.

II

Defendant also argues that the trial judge committed error in admitting the testimony of an expert witness during rebuttal. This Court reviews a challenge to the admission of evidence for an abuse of discretion by the trial court. *People v Figgures*, 451 Mich 390, 398; 547 NW2d 673 (1996). To be proper rebuttal evidence, the testimony must be in response to material presented by the defense. *Id.* at 399; *People v Bettistea*, 173 Mich App 106, 126; 434 NW2d 138 (1988). Proper rebuttal testimony may overlap with the prosecution's own case-in-chief, so long as the evidence is in response to the arguments and theories of the defense. *Figgures, supra*.

Here, defendant introduced "love letters" that the victim wrote to him while he was in jail after the alleged assault. A review of the record indicates that the love letters had been in the possession of defendant's mother and were unknown to the prosecution when the trial began. The defense further elicited testimony from the victim suggesting that she was then living with defendant. The change in the victim's living situation was a departure from previous sworn statements. The prosecution learned of the love letters and the victim's cohabitation with defendant two days into the trial. In rebuttal, over defendant's objection, the prosecution introduced testimony of an expert in domestic violence. The expert testified generally that victims of domestic violence are likely to remain in or return to abusive relationships, and are prone to write love letters to the abuser even if the abuser is incarcerated. The trial court limited the scope of the expert's testimony, and allowed the prosecution to proceed only in response to the defendant's previously unknown evidence.

We conclude that the trial court acted within its discretion in admitting the expert's testimony for the limited purpose of responding to material presented by the defense. The expert's testimony was limited to the common behavior of domestic abuse victims, which is often erratic and counter-intuitive. The evidence was in proper response to the defense's case-in-chief and cross-examinations that had painted the victim as a willing participant in an abusive relationship.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Brian K. Zahra
/s/ Donald S. Owens